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No. 90-993

In the

# Supreme Court of the United States

October Term, 1990

CSX TRANSPORTATION, INC.,

*Petitioner,*

vs.

STEPHEN RASTALL and TIMOTHY GOWDEY,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

## BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Respondents submit that the decision below presents the following questions:

1. Whether the Railway Labor Act applies to and requires arbitration of breach of contract claims by Canadian employees of a U.S.-based railroad who are employed outside the United States.

2. Whether the collective bargaining agreements between petitioner and respondents' unions preclude respondents from pursuing their breach of contract claims in a court action.

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## BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

## STATEMENT OF THE CASE

Respondents are two citizens of Canada who reside in the Province of Ontario and who work entirely in that Province as hourly employees for petitioner CSX Transportation, Inc. Beginning in 1986 respondents and other employees began submitting grievances to petitioner complaining of petitioner's practice of paying its Canadian employees in Canadian dollars without adjustment for differences in the exchange rate which, by 1986, had brought the value of the Canadian dollar down to 72 cents in U.S. currency.[1] Respondents believed that they were entitled under their collective bargaining agreements to the same wages, in real terms, as their fellow American employees. This belief was based on the facts, among others, that the agreements, which specify wages only in "$", were all negotiated and

[1] Until recent years the value of U.S. and Canadian dollars had been substantially equal, fluctuating within a range of a few percentage points. Since 1978 the value of the Canadian dollar has declined dramatically relative to the United States dollar.

executed in the United States by an employer and unions based in the United States on behalf of employees 99.4 percent of whom live and work in the United States, and that nothing in the agreements suggested that employees performing the same work would be compensated differently.[2]

After officials of petitioner denied respondents' grievances and appeals, respondents filed this action in February 1988 in the District of Columbia Superior Court for breach of contract. They filed the suit as a class action on behalf of themselves and their fellow Canadian employees of petitioner. They have been trying for two years, so far without success, to obtain an adjudication of the merits of their claim by that court.

Respondents filed their suit in the superior court rather than pursue their claims through the arbitration procedures established by the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, for two reasons. First, as the court of appeals noted (Pet. App. A-5), judicial decisions going back almost 40 years — which petitioner conspicuously ignores — have consistently held that the Railway Labor Act has no application to non-U.S. employees of U.S. carriers performing service entirely outside the United States.[3] Second, as the court of appeals held, (Pet. App. A-9 to A-17), the twelve collective bargaining agreements covering respondents and their fellow Canadian employees[4] contain

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[2] On the contrary, respondents believe that the agreements contain a number of provisions strongly refuting any such suggestion.

[3] *Air Line Dispatchers Ass'n v. National Mediation Board*, 189 F.2d 685 (D.C. Cir.), *cert. denied*, 342 U.S. 849 (1951); *Air Line Stewards and Stewardesses Ass'n v. Northwest Airlines*, 267 F.2d 170, 175 (8th Cir.), *cert. denied*, 361 U.S. 901 (1959); *Air Line Stewards and Stewardesses Ass'n v. Trans World Airlines, Inc.*, 173 F. Supp. 369, 374-78 (S.D.N.Y.), *aff'd*, 273 F.2d 69 (2d Cir. 1959), *cert. denied*, 362 U.S. 988 (1960); *General Comm. of Adjustment v. United States*, 102 L.R.R.M. (CCH) 2869, 2871 (D. Minn. 1979), *aff'd sub nom. General Committee of Adjustment v. Burlington Northern Ry. Co.*, 620 F.2d 161 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980); *Independent Union of Flight Attendants v. Pan American World Airways*, Av. L. Rep. (CCH) ¶ 18,452 (N.D. Cal. 1989); *Vollmar v. CSX Transportation, Inc.*, 705 F. Supp. 1154, 1164-65 (E.D. Va. 1989), *aff'd on other grounds*, 898 F.2d 413 (4th Cir. 1990).

[4] Petitioner, like other U.S. railroads, is unionized on a craft-by-craft basis. Respondents and their fellow Canadian employees are members of twelve different crafts, each of which is covered by a separate collective bargaining agreement with petitioner.

provisions expressly permitting employees to pursue their claims in court after they have been rejected by petitioner.[5]

Petitioner, however, immediately removed the case to federal court, claiming (despite the long line of consistent decisions to the contrary) that the Railway Labor Act applied to the dispute. Petitioner then moved the federal court to dismiss the suit on the grounds that the Railway Labor Act and the collective bargaining agreements required arbitration. United States District Judge Gesell, however, held that the Railway Labor Act did not apply, denied the motion to dismiss and remanded the case to the superior court. *Rastall v. CSX Corp.*, 696 F. Supp. 683 (D.D.C. 1988).

Back in the superior court petitioner renewed its arguments that the Railway Labor Act and the agreements required arbitration. The superior court made no ruling with respect to the Railway Labor Act, but it held that the agreements required arbitration and therefore dismissed the suit. Pet. App. A-19 to A-22. The superior court did not base its decision on the relevant language of the agreements, but on its conclusion that it would be anomalous to construe the agreements to give Canadian employees a judicial forum for dispute resolution that the Railway Labor Act denies to U.S. employees.

Respondents appealed. Pending the appeal, and in view of the superior court's decision, respondents and some of their fellow employees presented their currency claims in eleven separate submis-

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[5] In support of its contrary contention (*i.e.*, that the agreements require arbitration) petitioner's description of the dispute resolution provisions in the various agreements (Pet. 4-5) is highly selective and seriously misleading. Thus, petitioner quotes Rule 32(1)(c) of the Carmen's agreement, which provides for the submission of grievances to the National Railway Adjustment Board, but fails to note, until three pages later, that Rule 32(4) of that Agreement goes on to provide that "[t]his Rule is not intended to deny the right of the employees to use *any other lawful action* for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the carrier." (Emphasis supplied.) *See* Pet. App. A-9. Petitioner also completely ignores the dispute resolution provisions in five of the agreements, which make no reference whatever to arbitration or the NRAB, but which broadly authorize each employee to institute proceedings "before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved." Pet. App. A-10.

sions[6] to the National Railroad Adjustment Board ("NRAB"), the arbitration board established by the Railway Labor Act. In doing so they stated to the NRAB that they were not waiving or in any way receding from their position that the NRAB had no jurisdiction over the dispute and that they were submitting their claims only because they were required to do so by a court decision they believed to be wrong and were appealing. After the court of appeals reversed the superior court, respondents and the other employees requested to withdraw their submissions to the NRAB. The NRAB permitted the withdrawal of ten of the submissions but refused to permit withdrawal of one of the submissions because oral argument had been completed. The same NRAB referee who had earlier decided the CSXT submissions in CSXT's favor (*see* n. 6, *supra*) subsequently rejected the employees' claims in that case for the same reasons. (Pet. Supp. App. SA-167 to SA-171).[7] The affected employees have filed an action to

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[6] In accordance with the NRAB's practice, a separate submission was made for all employees in each separate craft.

Several months earlier, on October 3, 1988 CSXT had submitted to the NRAB the question whether the collective bargaining agreements required the currency dispute to be arbitrated. Neither CSXT nor the NRAB gave any notice of the submission to respondents or their counsel. Two unions, the United Transportation Union ("UTU") and the Brotherhood of Locomotive Engineers ("BLE") responded to this submission by addressing the merits of the currency dispute rather than the arbitrability question that was submitted. CSXT then agreed to treat its submission as a submission on the merits. Neither union challenged the jurisdiction of NRAB and the UTU declined to present any oral argument. A neutral NRAB referee ultimately ruled in favor of CSXT, finding that although "a strong case can be made" for the employees' contractual contentions, their claims were foreclosed by their past practice of accepting wages in Canadian currency. (Pet. Supp. App. SA-175 to SA-176). An action to set aside this decision on jurisdictional grounds has been filed in the United States District Court for the District of Columbia. *Allen, et al. v. CSX Transportation, Inc. and National Railroad Adjustment Board*, No. 90-3045 (D.D.C., filed December 14, 1990.)

[7] Petitioner erroneously states that the attorney for the employees withdrew the other submissions after the neutral referee rendered his decision in this one case (Pet. 6-7), as if to suggest that the employees waited to see what the decision was before deciding whether to submit their claims to the NRAB for decision. The employees sought to withdraw all of their submissions as soon as the court of appeals ruled that the Railway Labor Act did not apply and that the agreements did not require arbitration, and they consistently disputed the jurisdiction of the NRAB over these disputes.

set aside that decision on jurisdictional grounds. *Allen, et al. v. CSX Transportation, Inc., and National Railroad Adjustment Board*, No. 90-3045 (D.D.C., filed December 14, 1990).

On May 8, 1990 a panel of the District of Columbia Court of Appeals unanimously reversed the superior court and remanded the case for trial. In accordance with every other court decision which has addressed the issue, including Judge Gesell's earlier decision in this case and the recent decision of United States District Judge Ellis in another breach of contract suit brought by two of respondents' fellow Canadian employees against CSXT,[8] the court of appeals held that the Railway Labor Act "does not apply to foreign employees performing services entirely outside the United States." Pet. App. A-4. The court noted that its reading of the Railway Labor Act was in accord with "the consistent body of federal law elsewhere holding that the Railway Labor Act has no extraterritorial effect." (Pet. App. A-4 to A-5, citing cases.)[9]

The court of appeals also held that neither the Labor Management Relations Act, 29 U.S.C. §§ 185 *et seq.*, nor the Canadian Labour Code, assuming either of them applied, required arbitration of the employees' claims in this case (Pet. App. A-5 to A-6).

Finally, the court held that all of the collective bargaining agreements permitted petitioner's Canadian employees to pursue their grievances through court action (Pet. App. A-8 to A-17). Unlike the superior court, the court of appeals analyzed the language of the pertinent contract provisions and concluded that "the agreements are unambiguous in leaving the employees the choice of submitting their grievances to arbitration or resolving them in court." (Pet. App. A-14). The court's reasoning was in accord with the analysis and conclusions of Judge Ellis in *Vollmar v. CSX Transportation, Inc.*, on the same issue and the same contract provisions. *See* 705 F. Supp. at 1168-1170.

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[8] *Vollmar v. CSX Transportation, Inc.*, 705 F. Supp. 1154, 1164-65 (E.D. Va. 1989), *aff'd on other grounds*, 898 F.2d 413 (4th Cir. 1990).

[9] In view of the cited decisions, petitioner's characterization of the court of appeals decision as "unprecedented in U.S. labor law" (Pet. 7) is preposterous.

Petitioner filed a petition for rehearing en banc. No judge on the court of appeals requested a vote on the petition and it was denied on October 10, 1990 (Pet. App. A-23).

## SUMMARY OF ARGUMENT

There is no basis whatever for this Court's review of any of the issues presented by the court of appeals decision. There is no conflict among the state courts or the federal courts of appeals on any of the issues decided by the court below. On the contrary, that court followed and applied a consistent line of court decisions going back to 1951 regarding the territorial scope of the Railway Labor Act.

Nor does the case present any issue of general importance. Whether or not the court of appeals correctly decided that the particular collective bargaining agreements covering petitioner's employees permitted those employees to pursue their breach of contract claims in court is an extremely narrow issue that has no significance to anyone other than the parties to this case. It is an issue that turns on the language and provisions of these particular agreements, which are themselves subject to renegotiation by the parties at any time.

Finally, the ruling is essentially interlocutory. The court of appeals remanded the case for trial and petitioner may prevail on the merits at trial. There is no reason whatever for this Court to review any of the issues at this time even if they were otherwise worthy of review.

## ARGUMENT

### THE DECISION OF THE COURT OF APPEALS DOES NOT WARRANT THIS COURT'S REVIEW.

#### I. The Decision Below Does Not Conflict With the Decisions of Any Other State or Federal Court or With the Decisions of This Court.

Petitioner does not even contend that the decision of the court of appeals conflicts with the decisions of any other state court or any federal court of appeals. Nor could it so contend in view of the fact

that the court's ruling that the Railway Labor Act did not apply to respondents' claims is in accord with every other court decision that has considered the issue. *See* n. 3, *supra*.[10]

Petitioner scarcely acknowledges these decisions and its efforts to distinguish them (Pet. 16) are wholly insubstantial. While petitioner argues that most of the cases cited by the court of appeals involved representational disputes rather than contract disputes, that fact is completely irrelevant to the principle which they established and to the issue in this case: whether the Railway Labor Act applies to foreign employees of U.S. carriers performing service outside the United States.[11] Petitioner also argues that the one case that did involve a contract dispute, *General Comm. of Adjustment v. Burlington Northern, Inc.*, 620 F.2d 161 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980), is inapplicable because that case involved "no issue whether the carrier and union, by agreement, could apply the [Railway Labor Act's arbitration] procedures to all grievances." (Pet. 16). The present case, however, also does not involve such issue. In this case the court of appeals found that the agreements do *not* require the employees to pursue their grievances through the RLA's grievance procedures. This case does not involve the issue whether the agreements *could* have done so. Petitioner's argument under the Railway Labor Act is that that statute applies to this dispute and requires arbitration *regardless* of what the agreements provide. *General Comm. of Adjustment v. Burlington Northern* and all of the other cases relied on by the court below are directly relevant to that argument and have consistently rejected it.

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[10] Furthermore, as the Eighth Circuit noted in *Air Line Stewards and Stewardesses Ass'n v. Northwest Airlines*, 267 F.2d at 174, a 1955 Senate committee report acknowledged with approval the decision of the District of Columbia Circuit in *Air Line Dispatchers Ass'n v. National Mediation Board* and the 1949 National Mediation Board decision which it affirmed and declined to alter the "long-established doctrine that the labor laws of [our] country should not be given extraterritorial affect...." Sen. Doc. No. 163, 83d Cong., 2d Sess. Aviation Study 69-70 (1955).

[11] Petitioner's statement of this issue in its first "Questions Presented" is puzzling because it seems to suggest that in petitioner's view the applicability of the Railway Labor Act turns on whether "the Canadian employees are members of a craft or class composed of predominantly U.S. employees." Petitioner never contended to the courts below that the applicability of the Railway Labor Act turns on whether or not respondents' unions have more U.S. members than non-U.S. members, and does not make that argument in its petition.

Petitioner's claim that the decision below conflicts with decisions of this Court (Pet. 10-15) is completely baseless. None of the cases cited by petitioner involved foreign employees working outside the United States, and therefore none of them involved the issue presented here. Those cases merely held that when the Railway Labor Act applies, it requires arbitration of contract disputes. They are in no way inconsistent with the court of appeals' conclusion that the Railway Labor Act does not apply to disputes involving foreign employees employed outside the United States and therefore does not require arbitration of those disputes. Furthermore, while this Court has never directly addressed the territorial scope of the Railway Labor Act, the substantial and uniform body of lower court opinions on that issue is fully in accord with this Court's decisions on the territorial scope of other federal labor statutes such as the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, and the Labor Management Relations Act, 29 U.S.C. §§ 185 *et seq.* *See Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957) (holding that the LMRA applies only to "the working men of our own country and its possessions"). *See also, American Radio Ass'n v. Mobile Steamship Ass'n, Inc.*, 419 U.S. 215 (1974); *Windward Shipping (London) Ltd. v. American Radio Ass'n*, 415 U.S. 104 (1974); *McCullouch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963); *Incres S.S. Co. v. International Maritime Workers Union*, 372 U.S. 24 (1963).[12]

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[12] The extraterritorial effect of statutes turns on the intent of Congress as reflected in the words of the statute and the legislative history. As the Court said in *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 286 (1949), "[a]n intention so to regulate labor conditions which are the primary concern of a foreign country should not be attributed to Congress in the absence of a clearly expressed purpose." Petitioner has pointed to nothing in the language or history of the Railway Labor Act to support its claim that it applies here. Petitioner merely argues (Pet. 13-14) that the Railway Labor Act is applicable because respondents elected to pursue their claims in U.S. courts. Petitioner did not make this argument to the court of appeals and it is baseless. Under the test established by the cases, the Railway Labor Act does not apply to dispute involving "employees who are hired and who perform services completely outside the United States and its territories." *Airline Stewards and Stewardesses Ass'n v. Northwest Airlines*, 267 F.2d at 175. The scope of the Act does not turn on where those employees seek a remedy for their contract claims.

The issue in this case has little similarity to the issue regarding the scope of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, which is before this Court in *Equal Employment Opportunity Commission v. Arabian American Oil Co.*,

There is also no merit to petitioner's claim (Pet. 13) that the decision below warrants this Court's review because it conflicts with many decisions of the NRAB. Contrary to petitioner's implication, decisions of the NRAB and its sister agency, the National Mediation Board, are not consistent on this point; moreover, the clear weight of those decisions is in fact *against* petitioner's position. *See, e.g., General Comm. of Adjustment*, 102 L.R.R.M. at 2870 (citing five NRAB cases "involv[ing] disputes on work performed in Canada where the Board held it[self] to be without jurisdiction to entertain the controversy"); NMB Case No. R-1150, slip op. at 2 (April 15, 1945) (holding that railroad employees who worked exclusively in Canada were not entitled to vote for their representatives under the Railway Labor Act); *see also Oil Chemical Atomic Workers Int'l. Union*, 11 NMB No. 56 at 151 (Feb. 3, 1984). In contrast, only two of the NRAB decisions cited by CSXT specifically addressed the issue of the Board's jurisdiction; in the others, which involved disputes over fairly insignificant matters, no party appears to have questioned it (*see* Pet. Supp. App. SA-87 to SA-129). Moreover, the two decisions that did address the issue are devoid of any coherent rationale for rejecting the applicability of *Air Line Dispatchers* and other cases. *See* Pet. Supp. App. SA-70 to SA-72, SA-168. In any event, these decisions, which are generally non-appealable, do not constitute authoritative rulings of law and provide no basis for questioning the consistent body of judicial decisions on this issue.

## II. The Decision Below Is Not In Conflict With Federal Labor Policy or Canadian Labor Law and Presents No Issue of General Importance.

Having determined that the Railway Labor Act does not apply and therefore does not require arbitration of respondents' claims, the court of appeals then considered and rejected petitioner's contention that the collective bargaining agreements themselves required arbitration of the claims. Petitioner argues that this latter ruling somehow violated federal labor policy and Canadian labor law and will have important consequences for railroad labor relations. (Pet. 16-25.) There is no merit to any of these contentions.

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No. 89-1838, and *Boureslan v. Arabian American Oil Co.*, No. 89-1845. The issue in those cases involves a very different statute and its application to U.S. citizens employed by U.S. companies in other countries.

As the court of appeals itself acknowledged (Pet. App. A-14), federal labor law favors the arbitration of labor disputes, but it does not compel arbitration or preclude parties from providing for non-arbitral means of resolving contract disputes, as this Court recently reaffirmed in *Groves v. Ring Screw Works*, 111 S. Ct. 498 (1990). Petitioner seems to contend that the court of appeals violated federal policy by the very act of examining and interpreting the provisions of the collective bargaining agreements (Pet. 11-12, 16), but petitioner does not explain how else the court was supposed to rule on *petitioner's* claim that the agreements required arbitration.[13] Furthermore, petitioner does not object to the superior court's having interpreted the agreements; its real complaint is with the result reached by the court of appeals.

Petitioner's bald assertion that the Canadian Labour Code would require arbitration of this dispute (Pet. 8) is simply wrong, and its argument that the court of appeals violated principles of comity by failing to apply Canadian law (Pet. 19-23) completely ignores the court of appeals' careful analysis of the Canadian Labour Code (Pet. App. A-6 to A-8) and its clearly correct conclusion that that Code does *not* require arbitration of disputes where, as the court found in this case, the agreements permit other means of dispute resolution. As the Canadian Supreme Court stated in *St. Anne Nackawic Pulp & Paper Co., Ltd. v. Canadian Paper Workers Union Local 219* [1986] 1 S.C.R. 704, 723, the words of the Canadian statute "indicate that, if they so choose, the parties may validly provide for a variety of other sorts of settlement mechanisms, including recourse to the courts." (Quoted by the court of appeals at Pet. App. A-7.)[14]

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[13] Nor does petitioner explain how or why interpreting these agreements according to "federal principles" (Pet. 17) should have led the court of appeals to interpret them differently.

[14] Petitioner also argues that principles of comity should have impelled the courts below to decline to exercise jurisdiction over respondents' complaint and require them to file suit in Canadian courts (Pet. 20). Respondents are unaware of any principle of "comity" which would deny foreign citizens access to the courts of this country to assert breach of contract claims against a U.S. company that is subject to the court's jurisdiction. In any event, this argument was never made to the courts below and should not be considered here.

Petitioner's contention that the decision below will have important consequences for labor relations in the railroad industry (Pet. 23-25) is simply fanciful. In holding that the Railway Labor Act does not apply to this dispute the court of appeals applied well-settled law, which the courts have consistently followed for 40 years without any discernable adverse effects on labor relations in the railroad industry. The court's further ruling that the particular agreements between CSXT and its unions do not require the arbitration of disputes presents no federal question, is limited to these agreements and has no importance to anyone other than the parties to this case.[15] Petitioner's suggestion (Pet. 24) that the ruling below could subject petitioner to conflicting obligations toward its foreign and U.S. employees overlooks the fact that the claim in this case is by its nature limited to petitioner's Canadian employees (as a result of petitioner's choosing to treat its Canadian employees differently from its U.S. employees.)[16] Furthermore, petitioner is free at any time to seek renegotiation and revision of the dispute resolution provisions of its agreements to require arbitration of all grievances, including those by its Canadian employees.

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[15] The ruling was also clearly correct; indeed, petitioner does not even attempt to demonstrate any flaws in the court's analysis of the contractual provisions, but merely asserts that its own position was "plausible" and "arguably justified." (Pet. 15.) Moreover, the "explanation" of the contractual provisions it now offers (through different counsel) (Pet. 15) was never suggested to the court of appeals and petitioner did not cite to that court the case or the statutes cited at Pet. 15, n. 12. Furthermore, contrary to petitioner's claim, respondents' Canadian law expert did not admit that this so-called "explanation" was plausible (*see* Pet. Sup. App. SA-137 to SA-138).

[16] Furthermore, petitioner's contention that arbitration before the NRAB ensures uniformity of contract interpretation is belied by a recent report on the railroad arbitration system issued by the National Mediation Board and a committee of railroad and union representatives, entitled "Section 3 Report" (December 8, 1987) and set forth in the record below at R. 654-677. In addition to finding the system overloaded, unmanageable and unresponsive to the needs of parties and grievants, the report found that inconsistency of decisions on the same issue by different arbitration panels, whose decisions are largely unreviewable, was a significant problem. R. 661, 676-677.

### III. The Decision Below Is Essentially Interlocutory and There Is No Reason for this Court's Review At This Time In Any Event.

Even if the issues were otherwise worthy of this Court's review, which respondents submit they are not, there is no reason for this Court to exercise its discretion to review any of those issues at this time. The court of appeals remanded the case for a trial at which petitioner may prevail on the merits and thereby moot the issues. The decision is therefore essentially interlocutory and that circumstance is a further reason why the petition for review should be denied. *See Brotherhood of Locomotive Firemen v. Bangor & Aroostock R. Co.*, 389 U.S. 327, 328 (1967) (denying certiorari "because the Court of Appeals remanded the case [and thus] it is not yet ripe for review by this Court"); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).[17]

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[17] Petitioner contends that the ruling of the court of appeals on the Railway Labor Act is "final" as to that issue and that this Court therefore has jurisdiction to review that ruling under 28 U.S.C. § 1257(a), citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482 (1975). The fact that the Court may have jurisdiction to review that ruling does not mean that the Court should in its discretion exercise that jurisdiction when, as here, further proceedings may moot the issue and there are no special reasons why it should be reviewed immediately.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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